



September 3, 2008¹

ADVISORY OPINION 08-05

Interpretation of T.C.A. §§ 3-6-301 and 3-6-305 with respect to whether the Ethics Reform Act permits an employer of a lobbyist to provide, and a general assembly member to receive, benefits provided in connection with a reception for Tennessee delegates at a national party convention.

INTRODUCTION

The following Advisory Opinion is in response to a request from Mr. David Wilson, Executive Vice President of the Tennessee Credit Union League ("League").

QUESTIONS

1. May the League, which is the employer of a lobbyist ("Employer"), pay part of the cost of hosting a reception for Tennessee delegates² and guests, including general assembly members ("Members"), at a national political party convention?
2. If the answer to Question 1 is no, may the League's two (2) staff lobbyists attend the events if the individual credit unions and the National Association of Credit Unions ("NACU"), alone, and not the League, are paying for the events?

ANSWER

1. Yes. Under the facts presented, the League may pay part of the cost of hosting a reception for Tennessee delegates at a national political party convention, and Members who are delegates or guests of delegates may receive the benefits provided in connection with that reception.
2. As the answer to Question 1 is yes, there is no need for the Tennessee Ethics Commission ("Commission") to answer Question 2.

FACTS

The League is an Employer. Together with the NACU and many individual credit unions,³ the League plans to host receptions at both the Republican National Convention

¹ The request for a formal opinion was not received until July 15, 2008. At its July 22, 2008 meeting, the Commission decided the proposed activity would not violate the Act. The Commission informed the requestor of its decision shortly thereafter, before either party convention had commenced. This opinion follows that decision.

² Hereinafter, the word "delegate" shall also include "alternate delegates."

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(“RNC”) and Democratic National Convention (“DNC”) for the benefit of the Tennessee delegations.

Each reception will be hosted by the League. The NACU and other individual credit unions will contribute to, participate in and assist in the reception.

The DNC and RNC inform the credit unions of the type of event which could be held, the time the event could be held, the place the event could be held, and provide a list of delegate invitees. The League, as well as the NACU and the individual credit unions determine the cost of the event, arrange with the event venue for space, and determine the particulars of the event, such as what food and / or refreshment will be served to invitees.

Persons are invited to the event either because they are DNC or RNC delegates or they are guests of an RNC or DNC delegate. Reception invitees will include Members who are also delegates or guests of a delegate. The credit unions give no special treatment, recognition, or gifts to anyone present who also happens to be a Member or a Member’s guest.

ANALYSIS

A. The Act’s definition of “gift.”

Tenn. Code Ann. § 3-6-301(11) defines “gift” as, in part, “any payment, honorarium, subscription, loan, advance, forbearance, rendering or deposit of money or services, unless consideration of equal or greater value is received.”

Merriam – Webster Dictionary defines “reception” as “a social gathering often for the purpose of extending a formal welcome.”⁴ The host of a reception may provide meals, beverages, food, entertainment, “goodie bags,” and the like. These items would meet the definition of “gift” within the Tennessee Ethics Reform Act (“Act”).

B. Applicability of the Gift Ban.

Tenn. Code Ann. § 3-6-305(a)(1) prohibits Employers from giving gifts to Officials in the Executive or Legislative Branch or their immediate family. Likewise, Tenn. Code Ann. § 3-6-305(a)(2) prohibits officials in the legislative branch or their immediate family from accepting gifts from Employers. These two (2) provisions are together called the “gift ban.”

The Act defines “official in the legislative branch” as “any member, member-elect, any staff person or employee of the general assembly or any member of a commission established by and responsible to the general assembly or either house of the general assembly who takes

³ Many of the individual credit unions as well as the NACU do employ lobbyists, but not within Tennessee. Within Tennessee, the League is the only sponsoring organization which is also an Employer.

⁴ <http://www.merriam-webster.com/dictionary/reception>.

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legislative action.”⁵ The League advises that Members will be present at the receptions in question. Those Members would be subject to the gift ban.⁶

C. Exceptions to the Gift Ban.

As noted, any food, beverages, entertainment, “goodie bags,” and the like provided in connection with a reception would come within the definition of a “gift” under the Act. The League is an Employer. Attendees will include Members. Thus, the League could not provide, and Members could not receive, the gifts unless the gifts fall within an exception to the gift ban. Tenn. Code Ann. § 3-6-305(b)(1) through (12) set forth several exceptions to the gift ban.⁷ Relevant sections are discussed below.⁸

1. Tenn. Code Ann. § 3-6-305(b)(1) provides an exception to the gift ban in the case of the RNC and DNC delegates.

Tenn. Code Ann. § 3-6-305(b)(1) provides that the gift ban does not apply to “[b]enefits resulting from business, employment, or other outside activities of a candidate or official or the immediate family of a candidate or official, if such benefits are customarily provided to others in similar circumstances and are not enhanced due to the status of the candidate or official.”

The Commission finds that participation in partisan politics including attendance at either the DNC or RNC is an “outside activity” within the meaning of Tenn. Code Ann. § 3-6-305(b)(1). Any Members participating as RNC or DNC delegates or guests are simply delegates or

⁵ Tenn. Code Ann. § 3-6-301(20).

⁶ The request did not ask the question of whether the League may provide the food, beverages, entertainment, “goodie bags,” and the like in connection with the reception to Officials in the Executive Branch. As Officials in the Executive Branch are also subject to the gift ban, the analysis for Officials in the Executive Branch would be identical. Tenn. Code Ann. § 3-6-301(19).

⁷ The gift ban applies both in and outside of Tennessee. Likewise, the exceptions to the gift ban apply both in and outside of Tennessee. However, some exceptions apply only to out-of-state gifts, and some apply only to in-state events. For example, Tenn. Code Ann. § 3-6-305(b)(7)(A) provides an exception for certain out-of-state travel, and Tenn. Code Ann. § 3-6-305(b)(8) provides an exception for certain in-state events. *See also* House Hearing on H.B. 3889, 105th Gen. Assem., (Tenn. Apr. 28, 2008) (statement of Rep. Todd)(discussing the application of subsection (b)(7)(B), as amended, to both in and out-of-state events).

⁸ While Mr. Wilson refers to each of the planned receptions as a “state night,” the receptions would not fall within the exception for “state night” events as provided by Tenn. Code Ann. § 3-6-305(b)(7)(B). Subsection (b)(7)(B) provides that “state nights” are events “provided in connection with, and are arranged or coordinated through the employees or designated agents of, a conference, if the conference is sponsored by an established and recognized organization of elected or appointed state government officials, staff of state government officials or both officials and staff, or any other established and recognized organization that is an umbrella organization for such officials, staff, or both officials and staff.” The DNC and RNC are both established and recognized organizations, but they are not organizations of elected or appointed state government officials. Neither are they umbrella organizations for organizations of elected or appointed state government officials.

The legislative debate over the recent amendment to Tenn. Code Ann. § 3-6-305(b)(7)(B) does not change this result. *See* Joint Special Study Committee on Ethics, 105th Gen. Assem., (Apr. 21, 2008) (statements by Rep. Maddox and Rep. Todd).

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guests when attending either convention. All Tennessee delegates and guests attending either the RNC or the DNC will be able to enjoy any food, beverages, entertainment, “goodie bags,” and the like provided by the host of the reception, and no attendee will receive a benefit greater than any other attendee. A Member who is also a delegate or guest may receive any food, beverages, entertainment, “goodie bags,” and the like provided in connection with the reception the same as all other Tennessee attendees. This exception would not apply were the League to offer Members any enhanced benefit due to their status as Members.

2. Tenn. Code Ann. § 3-6-305(b)(6) provides an exception to the gift ban for delegates to the RNC and the DNC.

Tenn. Code Ann. § 3-6-305(b)(6) provides an exception to the gift ban for “[o]pportunities and benefits made available to all members of an appropriate class of the general public.”⁹ Implicit in this exception is the idea that a Member is receiving the benefit not due to his or her status as a Member, but due to his or her status as a member of an “appropriate class of the general public.”¹⁰ This exception would permit a Member to attend the reception and receive any food, beverages, entertainment, “goodie bags,” and the like, as long as the event was open to participation by persons other than Members, any such items received were not enhanced because an attendee was a Member, and participation in the reception was made available to “all members of an appropriate class of the general public.” All delegates and guests from Tennessee will be invited to each reception. Since a person does not have to be a Member to be a delegate or guest,¹¹ the class of Tennessee delegates and guests is an appropriate class of the general public.

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Adopted: July 22, 2008

⁹ Subsection (b)(6) does go on to state several specific examples, but makes clear the examples are not exhaustive by use of the language “including, but not limited to...”

¹⁰ See 1995 Ch. 529, S-75 at 1515-1655. This discussion, recorded during the 1995 amendment to the Ethics Act, made clear that Members wished to allow gifts if the gifts were customarily provided and not enhanced due to a person’s status. The example provided during the discussion was a wedding gift.

¹¹ While some Members are delegates or guests, not all delegates or guests are Members. Thus, under subsection (b) (6), the fact that some of the RNC and DNC delegates and guests are Members is of no relevance. The questions are whether all attendees are receiving the food, beverages, entertainment, “goodie bags,” and the like provided in connection with the reception and whether a Member’s benefit is in any way enhanced due to his or her status. If all attendees receive the same benefit, and the benefit is in no way enhanced due to a Member’s status as an Official, the food, beverages, entertainment, “goodie bags,” and the like provided at the reception are gifts, but would fall within the exception provided in Tenn. Code Ann. § 3-6-305(b)(6). See also Advisory Opinion 07-02.